United Nations S/2002/931

Security Council

Distr.: General
15 August 2002

Original: English

Ninth report of the Secretary-General pursuant to paragraph 14 of resolution 1284 (1999)

I. Introduction

1. The present report is submitted pursuant to paragraph 14 of Security Council resolution 1284 (1999), in which the Council requested me to report every four months on the compliance by Iraq with its obligations regarding the repatriation or return of all Kuwaiti and third-country nationals or their remains. The present report provides a brief account of the relevant developments since my last report on this issue (S/2002/419).

II. Background

2. In a letter dated 15 April 2002 from the First Deputy Prime Minister and Minister for Foreign Affairs of Kuwait, Sheikh Sabah Al-Ahmad Al-Jaber Al-Sabah, addressed to me (S/2002/427, annex), the Minister conveyed some views on the agreements reached at the Arab Summit in Beirut in March. He specifically brought to my attention paragraph 21 of the final communiqué of the Summit, in which the leaders of the Arab States "further call[ed] for Iraq's cooperation in the search for a speedy and definitive solution to the issue of the Kuwaiti prisoners and hostages ... in accordance with the relevant United Nations resolutions, as well as for Kuwait's cooperation in connection with the submissions made by Iraq through the International Committee of Red Cross (ICRC) concerning missing Iraqis". In paragraph 5 (a) of his letter, Sheikh Al-Sabah expressed hope that Iraq would resume its participation, "in a positive spirit, in the meetings of the Tripartite Commission" and would cooperate with the High-level Coordinator, Ambassador Yuli M. Vorontsov, "with a view to achieving a positive outcome that will end a humanitarian calamity that has been of long standing".

3. On 17 April, Ambassador Vorontsov introduced my seventh report pursuant to paragraph 14 of resolution 1284 (1999) (S/2002/419) to the members of the Security Council. He directed their attention to the observation that although no tangible progress had been achieved on the repatriation or return of Kuwaiti and third-country nationals or their remains, recent developments, including discussions between me and the Minister for Foreign Affairs of Iraq on 7 March and the Arab Summit in Beirut on 28 March, had provided some reasons for guarded optimism and hope.

4. Describing his activities, the Coordinator pointed out that special care had been taken to ensure that the procedures followed in dealing with the issue were discreet and had the main goal of endorsing dialogue and confidence-building, in particular with ICRC, the Tripartite Commission, the League of Arab States and the Organization of the Islamic Conference. He referred to annex I to the above-mentioned report and recalled that, although resolution 1284 (1999) did not cover the issue of the missing Iraqi persons, in most of the previous reports reference had been made to the existence of the problem. Responding to his statement, several members of the Security Council noted that efforts must be made to clarify the situation of all missing persons and that the United Nations should not be selective and should examine all cases of individuals said to be missing.

5. The members of the Security Council voiced their unanimous support for the work of the Coordinator and urged Iraq to cooperate fully with him. They expressed the hope that the plight of the Kuwaiti and third-

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country nationals would continue to be dealt with as a strictly humanitarian issue by all sides concerned and that it would be resolved urgently. The members of the Council recognized the growing international activity by the League of Arab States, the Organization of the Islamic Conference and the European Union directed towards persuading Iraq to change its stance of non-cooperation and called upon Iraq to stand by its commitments to fully implement the decisions of the Beirut Summit regarding the issue of the missing persons. In a statement to the press, the President of the Council stressed the importance of the work of ICRC and the Tripartite Commission.

6. On 19 April, the Commission on Human Rights, at the 48th meeting of its fifty-eighth session, adopted a resolution in which it called upon Iraq to "cooperate with the Tripartite Commission and its Technical Subcommittee to establish the whereabouts and resolve the fate of the remaining several hundred mission persons, including prisoners of war, Kuwaiti nationals and third-country nationals ..., cooperate with the Working Group on Enforced or Involuntary Disappearances for that purpose, to cooperate with the High-level Coordinator of the Secretary-General for Kuwait and third-country nationals and Kuwaiti property ..., to release immediately all Kuwaitis and nationals of other States who may still be held in detention and inform families about the whereabouts of arrested persons, to provide information about death sentences imposed on prisoners of war and civilian detainees and to issue death certificates for deceased prisoners of war and civilian detainees".[1]

7. On 21 April, the Secretary-General of the Gulf Cooperation Council, Abdul Rahman Al-Attiya, stated in Kuwait City that he hoped Iraq would respect resolutions of the Security Council and honour its commitments made at the Beirut Summit, in particular those regarding the Kuwaiti prisoners of war and detainees.

8. On 24 April, in an interview with the newspaper *Asharq al-Awsat*, the Minister of State for Foreign Affairs of Kuwait, Sheikh Mohammad Sabah Al-Salam Al-Sabah, said that Kuwait awaited a positive initiative "from our brothers in Iraq on the Kuwaiti prisoners" and hoped that Iraq would quickly return to the Tripartite Commission and meet with the Coordinator. He added that "if Iraq implements all related Security Council resolutions, and mainly the return of Kuwaiti prisoners, then we will move to the phase of reconciliation".

9. Addressing the seventh meeting of the Executive Committee of the Parliamentary Union of the States members of the Organization of the Islamic Conference on 28 April, the Speaker of the Kuwait Parliament, Jasem al-Khorafi, called upon Iraq to continue to show the good intentions it had displayed at the Beirut Summit by releasing all Kuwaiti prisoners of war. He was supported by the Secretary-General of the Parliamentary Union, Ibrahim Ouf, who called the Kuwaiti demands a "legitimate request".

10. On 29 April, at Durban, South Africa, the Ministerial Meeting of the Coordinating Bureau of the Movement of Non-Aligned Countries issued a final communiqué adopting the Arab Summit's formula regarding the situation between Iraq and Kuwait, including the call on Iraq to cooperate in seeking a definitive solution to the issue of Kuwaiti prisoners and detainees. The Ministers specifically demanded "that Iraq cooperate in order to find an expeditious and final solution for the issue of Kuwait prisoners and detainees ... in accordance with the relevant resolutions of international legality".

11. On 30 April, the First Deputy Prime Minister and Minister for Foreign Affairs of Kuwait, Sheikh Sabah Al-Ahmad Al-Jaber Al-Sabah, told the Russian daily newspaper *Vremya Novostei* that the issue of the prisoners of war remained a major factor in determining the position of Kuwait regarding its relations with Baghdad. He reiterated that view in his letter addressed to me on 3 May, in which he expressed the hope that Iraq would extend efforts to release Kuwaiti prisoners in accordance with the agreements reached at the Beirut Summit.

12. On 19 May, the Chairman of the Kuwait National Committee for Missing Persons and Prisoner of War Affairs, Sheikh Salem Sabah Al-Salem Al-Sabah, stated in Cairo that the issue of prisoners of war, missing persons and detainees "was a primary issue in Kuwait". He pointed out that any attempts to transfer the issue to the Arab organizations represented "evasion, since Iraq did not abide by Arab agreements during the invasion of Kuwait". He further noted that Kuwait was rejecting the transfer of the file from the Security Council and would ensure that "the Iraq-Kuwait file would continue to be international in accordance with relevant Security Council

resolutions".[2] The Chairman recalled that Kuwait had put forward a proposal to hold an international conference in Cairo on prisoners and human rights, under the sponsorship of Egypt and the League of Arab States. During a meeting with the Secretary-General of the League, Amre Moussa, the Chairman drew attention to Iraq's non-cooperation with the League on the issue of missing persons and reiterated Kuwait's position that the United Nations alone should be in charge of the humanitarian files.[3]

13. On 7 June, speaking to reporters prior to the opening of the eighty-third session of the Ministerial Council of the Gulf Cooperation Council, the Minister of State for Foreign Affairs of Kuwait, Sheikh Mohammed Sabah al-Salem al-Sabah, noted that Iraq had not taken many positive steps based on what had been agreed at the Arab Summit. The following day, the Council issued a press communiqué expressing "its hope that what had been agreed on at the conference would lead to concrete and practical steps conducive to the implementation of relevant international resolutions, particularly with regard to Kuwaiti prisoners and detainees and the nationals of other States" (see A/56/997-S/2002/706, annex).

14. During the twenty-ninth session of the Islamic Conference of Foreign Ministers, held from 25 to 27 June, the Organization of the Islamic Conference adopted a resolution on the situation between Iraq and Kuwait (resolution 18/29-P), in which it requested Iraq to "cooperate in finding a speedy and final solution to the issue of Kuwait prisoners and detainees ... in accordance with relevant resolutions of the international legitimacy, and the cooperation of Kuwait in Iraq's submission concerning the latter's missing persons, through the International Committee of the Red Crescent". The commitment of the organization was further emphasized in its final communiqué, in which it welcomed "Iraq's affirmation on respecting the independence and sovereignty of the State of Kuwait, ensuring its security and territorial unity and integrity, and working to find a solution to the issue of prisoners, detainees and missing persons".

15. On 14 July, Secretary-General Moussa of the League of Arab States met with the Vice-Chairman of the Kuwait National Committee for Missing Persons and Prisoner of War Affairs, Ibrahim Al-Shaheen, and stated his personal concern over the issue of Kuwaiti missing persons. The Secretary-General of the League expressed his readiness to pursue efforts aimed at resolving this humanitarian issue. In addition, on 23 July, Mr. Moussa stressed in a press statement that dealing with the Kuwaiti prisoners file was the most important step that should be carried out in the context of the situation between Kuwait and Iraq. He said that the issue was a "top priority" on the agenda of the League of Arab States in putting an end to all outstanding inter-Arab differences.

III. Recent activities

16. It will be recalled that from 1 to 3 May, I held another round of discussions in New York with the Minister for Foreign Affairs of Iraq, Naji Sabri, during which he reiterated the well-known position of Iraq regarding the issue of missing persons. I briefed the Security Council on the outcome of this round on 3 May (see S/2002/664, paras. 18 and 19).

17. On 6 May, I met with the Permanent Representative of Kuwait to the United Nations, Ambassador Mohammad Abulhasan, who recalled that under the terms of the agreements reached at the Arab Summit in Beirut, Iraq had pledged to cooperate regarding the issue of Kuwaiti prisoners of war and missing persons in accordance with the relevant Security Council resolutions. The Ambassador expressed the hope that the issue of the repatriation or return of all Kuwaiti and third-country nationals or their remains would be raised during the next round of talks with Iraq and that the High-level Coordinator would participate in the talks. Similar requests were made by several permanent members of the Security Council.

18. On 15 June, Mr. Sabri addressed a letter to ICRC expressing the willingness of Iraq to discuss missing persons and confirming its readiness to cooperate directly with ICRC and the State of Kuwait to resolve the issue of missing Iraqis and Kuwaitis in accordance with the principles of international law, notably the third Geneva Convention. The Ministry of Foreign Affairs of Iraq, in a statement released on that occasion, noted that Iraq would not take part in the meetings of the Tripartite Commission because of "the presence of States with no relevance to the issue of missing persons in the Commission". (It will also be recalled that Iraq had proposed to form a committee of the League of Arab States on the issue of prisoners of war and Iraqi and Kuwaiti missing persons. The Government of Kuwait had rejected the proposal.)

19. Reacting to the most recent initiative of Iraq, Kuwait called for concrete steps. The Under-Secretary of the Ministry of Foreign Affairs of Kuwait, Khalid Al-Jarallah, expressed the hope that there would be "real, serious cooperation with the United Nations followed by all other efforts to release Kuwaiti prisoners of war".[4] On 18 June, the Minister of Information of Kuwait, Sheikh Ahmed Al-Fahal Al-Sabah, stated that Iraq must stop politicizing the emotional issue of missing persons and should take positive steps to determine their fate rather than merely issuing press statements. Kuwait continued to maintain that the issue should be resolved within the framework of the United Nations and that all new proposals should be presented to ICRC and the Tripartite Commission.

20. In his briefing of the members of the Security Council on 21 June, the Coordinator noted that the progress that was expected to be made with regard to the return of the Kuwaiti archives would be an important indication of the willingness of Iraq to cooperate on the humanitarian problem of the repatriation or return of all Kuwaiti and third-country nationals or their remains and that the international community would expect Iraq to take practical steps in that direction.

21. The Coordinator continued to actively pursue the matter of the missing Kuwaiti and third-country nationals. In connection with the meeting of the Tripartite Commission in Geneva from 1 to 3 July and my talks with Minister for Foreign Affairs Sabri of Iraq in Vienna on 4 and 5 July, Ambassador Vorontsov held a series of independent meetings with the parties involved.

22. In Geneva, he met with the Deputy Director of Operations of ICRC, Françoise Krill; the Executive Secretary of the United Nations Compensation Commission, Rolf Goran Knutsson; the Director-General of the United Nations Office at Geneva, Sergei Ordzhonikidze; and members of the Tripartite Commission. Ms. Krill pointed out that ICRC was continuing to seek ways to achieve progress in determining the fate of persons unaccounted for. The ICRC representatives in Baghdad and Kuwait maintained their dialogue with the authorities and felt that "the parallel approach" still represented an appropriate means of achieving tangible results. ICRC was planning to host a conference in 2003 on persons unaccounted for, including Kuwaiti and Iraqi missing persons. Ms. Krill expressed strong support for the activities of Ambassador Vorontsov and encouraged him to continue making every effort to resolve the issue.

23. At their meeting, the members of the Tripartite Commission expressed their commitment to making every possible effort to resolve the important humanitarian issue by helping to restore dialogue among the parties. Some members of the Commission felt that Iraq needed to demonstrate by deeds that it was in reality undertaking efforts to collect all information available on Kuwaiti missing persons. The case of Captain Speicher was addressed by the delegation of the United States of America.[5]

24. On 3 July, the Coordinator briefed me in Vienna on his visit to Geneva and the discussions he had held there. Also in Vienna, he met with the Ambassador of Kuwait, Nabila Al-Mulla.

25. During the round of talks in Vienna with the Minister for Foreign Affairs of Iraq, the High-level Coordinator, as a member of my delegation, made a statement. He referred to the Amorim panel, which had noted the humanitarian nature of the issue of missing persons and recommended, first, that any procedure to be established with a view to determining their fate should inform the Security Council of the issue without politicizing it; secondly, that such a procedure should be a motivational factor for cooperation and a positive inducement for progress and understanding; and thirdly, that the procedure should not impinge on the work of independent bodies such as ICRC and should not interfere with the functioning of the Tripartite Commission. The Coordinator noted that an effective relationship had been established with the members of the Commission and that special attention had been given to the respect of the principle of confidentiality and impartiality of ICRC.

26. Minister Sabri took special note of the Amorim panel's caution against politicizing the issue of missing persons. According to the Minister, resolution 1284 (1999) had shifted the issue from ICRC to the Security Council, thereby politicizing it. The issue, in his view, had to be resolved directly between the parties concerned without outside interference. He recalled the recent Iraqi initiatives and reconfirmed the readiness of Iraq to resolve the issue directly with Kuwait, with the participation of ICRC and the League of Arab States, a position made public and officially conveyed to the League earlier. The Minister reiterated Iraq's offer to

receive a Kuwaiti delegation "consisting of any number of people, for any duration of time, in order to visit, without prior notification, any facility or private residence and to search for those missing". He underlined that time was of the essence and "with further passage of time, the fate of many missing individuals could be lost track of".

27. Referring to Iraq's cooperation with ICRC and Kuwait's readiness to move forward along the lines of Iraq's proposal described above, the Minister said that ICRC had recently sent a representative to Kuwait to brief the authorities there, since only direct contact between the parties concerned, during which information on those missing would be exchanged, could bring results.

28. Minister Sabri also stated that meetings were being held regularly between Iraq and the Islamic Republic of Iran on the issue of prisoners of war, including on the exchanges of prisoners of war and their mortal remains. The Minister felt that cooperation between the two countries could serve as an example of the way humanitarian issues should be handled.

29. I pointed out to Minister Sabri that the Coordinator had taken a balanced, discreet and neutral position on the issue, including the recognition of Iraq's claim of its own missing persons (see para. 4 above). The Minister thanked the Coordinator for having stressed the need not to politicize the issue, as well as for his reference to the Iraqi missing persons.

30. On 8 July, my Chef de Cabinet, Under-Secretary-General S. Iqbal Riza, briefed the members of the Security Council on the Vienna round of talks. On the issue of the repatriation or return of all Kuwaiti and third-country nationals or their remains, he stated that the Minister for Foreign Affairs of Iraq had said that ICRC had formulated a proposal to try to resolve the humanitarian problem through a bilateral Iraq-Kuwait mechanism functioning under the auspices of ICRC, similar to the mechanism which functioned successfully between Iraq and the Islamic Republic of Iran.

31. The members of the Security Council expressed the hope that the positive signs shown by Iraq regarding the return of the Kuwaiti national archives would be "carried over" to the issue of missing persons. They regretted that no progress had been achieved in this area. The Council reiterated the need for Iraq to immediately fulfil all requirements under the relevant resolutions, including on the repatriation or return of all Kuwaiti and third-country nationals or their remains.

32. In the course of a visit to Kuwait City from 7 to 10 July, Ambassador Vorontsov met with the First Deputy Prime Minister and Minister for Foreign Affairs of Kuwait, Sheikh Sabah Al-Ahmad Al-Jaber Al-Sabah; the Under-Secretary of the Ministry of Foreign Affairs, Khaled Al-Jarallah; as well as with members of the National Committee for Missing Persons and Prisoner of War Affairs, Ibrahim Al-Shaheen and Rabea Al-Adsani. The Minister of State for Foreign Affairs of Kuwait, Sheikh Mohammad Sabah Al-Salem Al-Sabah, hosted a luncheon for the Coordinator.

33. The Chairman of the National Committee for Prisoners of War and Missing Persons, Sheikh Salem Sabah Al-Salem Al-Sabah, both in Geneva and in Kuwait City, stressed to the Coordinator that the issue of the repatriation or return of all Kuwaiti and third-country nationals or their remains was of utmost importance. On the proposal to convene a new committee with Kuwait, Saudi Arabia, Iraq and ICRC, Sheikh Sabah noted that, in principle, "Kuwait had no objection". However, he stressed that the suspension of participation of other members of the Technical Subcommittee could not last longer than six months.

34. In all his meetings with his Kuwaiti interlocutors, the Coordinator emphasized Iraq's obligations to search for missing persons. He also expressed the hope that Baghdad would demonstrate goodwill by returning the mortal remains. He further stressed that it was essentially a humanitarian issue and that a solution must be found within such a framework. Ambassador Vorontsov was informed that Kuwait was ready to explore any reasonable and practical ideas to facilitate a resolution, provided that they did not contravene the general principles of international law.

35. At the close of his visit, Ambassador Vorontsov observed that there had been encouraging developments with regard to the follow-up efforts to ensure the resolution of the issue of the repatriation or return of all Kuwaiti and third-country nationals or their remains. He noted that ICRC was intensifying its efforts both in Iraq and in Kuwait. The Coordinator expected a positive outcome of these efforts which could help to resolve the humanitarian problem in the not-so-distant future.

36. On 16 July, the Permanent Mission of Iraq to the United Nations forwarded to the members of the Security Council a summary of the Vienna round of talks, which included the following observation: "Mr. Vorontsov ... expressed his readiness to coordinate the efforts in the question of determining the fate of the missing. The Minister [for Foreign Affairs] said that Iraq does not accept to move this file from ICRC to the Security Council, to prevent this file from being politicized. The right solution to the missing file is to discuss it with the parties that have missing persons and under the supervision of ICRC. Iraq is seeking to achieve that."

IV. Observations

37. During the Security Council luncheon on 23 July, I reiterated that there had not been much progress on the issue of the repatriation or return of all Kuwaiti and third-county nationals or their remains, as Iraq refused to cooperate with the Tripartite Commission.

38. As has been stated on numerous occasions, the Coordinator can only achieve what he is mandated to accomplish if Iraq changes its position of non-cooperation with resolution 1284 (1999). He remains ready, at short notice, to meet once again with Iraqi officials, at any time and at any place. It is my strong conviction that a dialogue between the Government of Iraq and the Coordinator would bring positive results in the search for a solution to the exclusively humanitarian issue with which Ambassador Vorontsov has been entrusted.

39. I also greatly appreciate the continued efforts of ICRC to resolve this humanitarian issue, and its dialogue with the Iraqi, Kuwaiti and Saudi Arabian authorities, as well as other parties concerned, towards this end. I encourage ICRC, as well as other international agencies and organizations, to continue to remain engaged to promote an expeditious resolution of this issue. At the same time, the Tripartite Commission remains the most appropriate mechanism to deal with the issue, and the Coordinator will continue to maintain close contacts with it.

40. Finally, despite the encouraging agreements at the Arab Summit in Beirut, Iraq's words on the fate of the missing persons are yet to be matched by tangible deeds. There still is a window of opportunity to address humanitarian issues, such as that of missing persons, in good faith. Iraq should use this opportunity to restore its credibility on the outstanding humanitarian issues. I would like to encourage ICRC, the members of the Tripartite Commission, the Coordinator and the parties concerned to further intensify their efforts in order to achieve conclusive results at the earliest time.

Notes

[1] E/CN.4/2002/L.26, para. 4 (j).

[2] Kuwait News Agency; Xinhua News Agency.

[3] *Gulf News*; Agence France-Presse.

[4] Agence France-Presse.

[5] The United States Secretary of Defense, Donald Rumsfeld, and the Secretary of State, Colin Powell, agreed in July to send a diplomatic note to Iraq through ICRC in response to a 19 March invitation to the United States to send a team of investigators to Iraq. The note would seek clarification on whether the Government of Iraq would offer new information regarding the fate of Captain Speicher. The United States had earlier declined to send a delegation to Iraq since the invitation stated that the authorities in Baghdad had no new information to offer.

Depending on the response to the note, the United States would decide whether to propose a meeting in Geneva under the auspices of ICRC. United States officials agreed that every avenue should be explored in order to resolve the case.